

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**SCOTT PHILLIPS,**

**Plaintiff,**

**v.**

**Civil Action No. 2:25-cv-00340  
Honorable \_\_\_\_\_**

**CORPORAL MICHAEL COSTELLO,**

**Defendant.**

**DEFENDANT MICHAEL COSTELLO’S PETITION FOR REMOVAL**

**COMES NOW** Defendant, Michael Costello, by counsel John P. Fuller, Harrison M. Cyrus, and the law firm of Bailey & Wyant, PLLC, pursuant to 28 U.S.C. §§ 1331, 1367, and 1441, and hereby Petitions this Honorable Court for the removal of the case *sub judice*, Civil Action No. 25-C-7, from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of West Virginia. In support of this Petition for Removal, this Defendant hereby states as follows:

1. On or about January 7, 2025, an action was filed in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 25-C-7, on the docket of that Court.
2. Defendant Michael Costello was served with a copy of the Summons and Complaint on May 3, 2025. *See* “Return of Service”, attached as “Exhibit 1”. The Complaint includes claims under Count II which assert violations of 42 U.S.C. § 1983 against Defendant Costello. *See* “Complaint”, attached as “Exhibit 2”. In accordance with 28 U.S.C. §1446(b), this Notice is filed within 30 days of the date on which such notice was provided/received.
3. A copy of the Circuit Court’s docket sheet is attached as hereto as “Exhibit 3”.
4. One of the categories of cases over which the federal District Courts have original

jurisdiction are cases that involve a “federal question,” those cases “founded on a claim arising under the constitution, treaties, or laws of the United States.” 28 U.S.C. §1331.

5. The causes of action asserted in the Complaint against Defendant Costello discussed in Paragraph 1 herein are federal in character because they allege that Defendant Costello violated Plaintiff’s federal constitutional rights. The Complaint seeks specifically to vindicate rights secured by the United States Constitution. “When a plaintiff specifically and intentionally raises a federal question on the face of the complaint, the action is removable regardless of the vagueness of the allegations.” *Scott v. Greiner*, 858 F.Supp. 607 (S.D.W.Va. 1994) (Haden, J.).

6. This Court has supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367:

In any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

“The state and federal claims must derive from a common nucleus of operative fact.” *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966). Here, all of the Plaintiff’s claims arise out of an alleged use of force against Plaintiff Scott Phillips at the North Central Regional Jail, which is the common nucleus of operative fact from which Plaintiff’s claims derive.

7. Being filed within 30 days of May 3, 2025, this *Petition for Removal* is timely. A filing fee of \$400 made payable to the Clerk of the United States District Court has been electronically made contemporaneously with the filing of this Notice of Removal.

8. A true and complete copy of the Notice of Filing of Notice of Removal contemporaneously filed in the Circuit Court of Kanawha County, West Virginia is attached hereto as “Exhibit 4.”

9. The filing of this Notice, along with the filing of a copy of the Notice in the Circuit Court of Kanawha County, West Virginia, and service of this Notice upon opposing counsel, serves immediately to confer exclusive jurisdiction over this case upon the United States District Court, and divests the Circuit Court of Kanawha County, West Virginia of jurisdiction over these proceedings. See e.g., *Maseda v. Honda Motors Co.*, 861 F.2d 1248, 1254-55 (11<sup>th</sup> Cir. 1988) (stating that “after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in this case.”) “Any subsequent proceedings in state court are void ab initio.” *Id.*

10. Defendant Costello will file its responsive pleading within 7 days of this removal as provided under Rule 81(c)(2)(C) of the Federal Rules of Civil Procedure.

11. There are no other Defendants named in the case.

**WHEREFORE**, on the foregoing basis, Defendant Michael Costello requests that the civil action pending against him in the Circuit Court of Kanawha County, West Virginia, bearing Civil Action No. 25-C-7 be removed from that court to the United States District Court for the Southern District of West Virginia at Charleston.

**Michael Costello,  
By Counsel,**

/s/ Harrison M. Cyrus  
**John P. Fuller (WV Bar #9116)**  
**Harrison M. Cyrus (WV Bar #12731)**  
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**CORPORAL MICHAEL COSTELLO,**

**Defendant.**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of foregoing **Defendant Michael Costello's Petition for Removal** was served upon the following parties through the Court's Electronic Case Filing (ECF) system on this day, May 23, 2025:

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**/s/ Harrison M. Cyrus**  
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